IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5996 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOMABHAI MAGANBHAI RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for the Petitioner.

MR KAMEN N SHUKLA for Petitioner No. 1

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 28.2.2004. By

the impugned order, the petitioner-detenu is detained as a 'bootlegger', under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenu was also served with the grounds of detention. In the grounds of detention, there is a reference about one registered criminal case against the petitioner under the Bombay Prohibition Act.

The authority, after taking into consideration the aforesaid solitary case, and after recording the statements of witnesses, whose names have not been disclosed to the petitioner, detained the petitioner under PASA. It is the aforesaid order which is impugned in this petition.

The learned Advocate for the petitioner has submitted that there is only a solitary case against the petitioner and that on the basis of such solitary case, it was not proper for the authority to exercise such power under preventive detention and such case can be taken care of under the ordinary criminal law. The learned advocate for the petitioner submitted that, there is only a solitary incident and, therefore, it cannot be said that the petitioner is a habitual offender or that he has disturbed public order. He also further submitted that, since this is the solitary incident, the petitioner should not have been detained under PASA. In this connection, the learned Advocate for the petitioner has placed reliance upon the decision of this Court in Sandip Omprakash Gupta v. State of Gujarat and others, 2004(1) GLR 864, wherein a solitary offence under the Bombay Prohibition ACt was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a 'bootlegger', is set aside. Since I am bound by the view taken by the learned single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, only on the basis of the aforesaid submission about solitary case lodged against the petitioner, which can be taken care under the ordinary criminal law, this petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made

absolute.

At this stage, Mr.Dave, learned Advocate for the petitioner-detenu, submitted that the petitioner will not enter Surat City upto 31st October, 2004. This voluntary statement is recorded. It is for the authority to monitor the same.

17th August, 2004 (P.B. Majmudar, J.)

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(apj)